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March 1, 2024

VIA ECF

Hon. Arun Subramanian, United States District Judge
United States District Court
Southern District of New York
500 Pearl Street, Courtroom 15A
New York, NY 10007

**Re: Mariko Shinagawa, et al. v. United States of America, et. al.
Civil Action No. 1:22-cv-10173**

Dear Judge Subramanian:

We are submitting this letter motion on behalf of, and with the consent of, all parties to respectfully request an extension of the discovery deadlines in this medical malpractice case in which Plaintiffs allege that infant plaintiff K.D.S. and plaintiff Mariko Shinagawa were injured during the birth and delivery process and/or post-partum period, as a result of the negligence and/or departures from the standard of care by Defendants.

This is the parties **third request** for an extension of deadlines, which two prior requests were granted, first by the Honorable Judge Mary Kay Vyskocil (ECF No. 68) and then by Your Honor (ECF No. 77). The previous deadlines set by your Order dated November 15, 2023 (ECF No. 77) were as follows:

- Completion of Fact Depositions: February 2, 2024;
- Plaintiffs' expert reports: March 4, 2024;
- Defendants' expert reports: April 5, 2024;
- All depositions (fact and expert): May 22, 2024;
- Status Conference: May 24, 2024.

We seek this extension, as although the parties worked diligently to schedule all of the depositions, there was difficulty coordinating dates due to limited availability of the witnesses, and we were not able to complete the last discovery deposition until March 1, 2024. The parties have now completed the deposition of plaintiff Mariko Shinagawa, two depositions of Shinya Shinagawa, the deposition of Sandy Lui Bui, M.D., the deposition of Sarina Shuster, PA, and the deposition of Shan Fang, R.N., the latter of which was just completed on March 1, 2024. It was Plaintiffs' understanding that this was the earliest date available for Nurse Fang and her counsel, and all other parties agreed to the first offered date. As stated in our previous letter motion for an extension (ECF No. 76), after the completion of Nurse Fang's deposition, the Plaintiffs would be in a position to determine if we would seek to depose additional providers or if we could waive all of the remaining fact depositions. Plaintiffs have now agreed to waive all remaining depositions, and there are no remaining fact depositions. The Defendants are also not seeking any depositions.

It was the deposition of Nurse Fang not taking place until March 1, 2024 (about 30 days after the fact deposition deadline), and the fact that we would not have the transcript from such deposition available for around 2 weeks thereafter, which necessitated moving Plaintiffs' and then Defendants' deadlines for expert reports each by 30 days. Initially, pursuant to Your Honor's Rules and form Case Management Plan, the parties agreed, on consent, to move the interim dates as the parties believed we could still complete discovery by the Court's Discovery End Date of May 22, 2024, and so the parties agreed to move the interim date to complete fact depositions 30 days to March 3, 2024, to similarly move Plaintiffs' expert report deadline 31 days to April 5, 2024, and to similarly move the deadline of defense expert reports 31 days to May 6, 2024, while still aiming to complete all depositions of experts by May 22, 2024, especially as Plaintiffs do not anticipate taking all of the defense experts' depositions.

However, the parties now anticipate that we may need at least another 47 days (45 days would be a Saturday) to complete all discovery, including expert depositions, so we are therefore requesting this extension of 47 days of the discovery end date from May 22, 2024 to July 8, 2024, in order to complete expert discovery and expert depositions and are requesting to formalize the adjustment of the interim dates for discovery, as we realized the language about adjusting interim deadlines was not in the previous letter motion but was in your form Case Civil Management Plan and Scheduling Order, which order was not formally entered due to the fact that the case was originally assigned to another judge. Defendants also believe they may need more than 30 days to do their reports given the number of Plaintiffs' experts and exam/testing reports that will be exchanged, and Defendants' need for their experts to perform physical exams of the plaintiff infant in order to respond to Plaintiffs' expert reports. Plaintiffs agree to 45 days for Defendants to serve their reports.

The reason the parties believe more time will be needed to complete expert depositions is because Plaintiffs are exchanging six experts and we anticipate that the Defendants may have an equal number of experts. The Plaintiffs have already exchanged with the Defendants the specialties of our six experts in order to help speed up the expert discovery process and allow all parties sufficient time to retain experts. The Plaintiffs just need the transcript of Nurse Fang's deposition and the Plaintiffs' experts will be able to complete their reports. We just need some additional time from the completion of fact depositions (in this case, the last deposition was completed on March 1, 2024) to ensure Plaintiffs experts have sufficient time to complete their expert reports, to ensure

the Defendants have sufficient time to complete their reports, and to ensure there is sufficient time to complete the requested expert depositions.

We therefore respectfully request that the deadline to complete all discovery be extended by 47 days, from May 22, 2024, to July 8, 2024, with the corresponding interim deadline extensions:

- a) Plaintiffs' expert reports: April 4, 2024;
- b) Defendants' expert reports: May 20, 2024;
- c) All depositions (fact and expert): July 8, 2024.

We also respectfully request that, pursuant to Your Honor's Civil Case Management Plan, that the Court allow the parties (on consent) to adjust the interim deadlines for items a-b, so long as such will not require a further extension of the discovery end date/deadline to complete expert depositions.

We thank the Court for its consideration of this request.

Respectfully submitted,

By: /s/ Christopher M. Nyberg
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